Supreme Court, U.S.
FILED

No. 091154 MAR 18 2010

OFFICE OF THE CLERK

In The

Supreme Court of the United States

HOWARD A. FOX,

Petitioner,

v.

STATE OF FLORIDA UNEMPLOYMENT APPEALS COMMISSION, TERMINIX INTERNATIONAL, INC.,

Respondents.

On Petition for Writ of Certiorari to the District Court of Appeal of the State of Florida, Fourth District

PETITION FOR WRIT OF CERTIORARI

HOWARD A. FOX
P.O. BOX 742273
BOYNTON BEACH, FL 33474
(407) 267-8194

Petitioner pro se

March 18, 2010

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

Questions Presented

> "The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended . . . that equal protection and security should be given to all [and] they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts...."

U.S. Supreme Court Justice Steven Field, Barbier v. Connolly, 113 U.S. 27, 35 (1885).

1) By terms of the U. S. Constitutional 5th and 14th amendments, have the Florida Supreme Court and the Florida 4th DCA denied the petitioner his constitutional right to procedural due process in a property interest of congressionally funded unemployment funds per "A legitimate claim of entitlement to a benefit"?

Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972).

2) Has the Florida 4th DCA affirmed the decision of the lower tribunal, the Florida UAC, thereby conflicting with the opinion of the U.S. Supreme Court and its own opinions?

Hobbie v. Florida Unemployment Appeals Commission, 480 U.S. 136 (1987).

3) Has the Florida 4th DCA's affirmation of the UAC opinion in the petitioner's appeal set precedence for violating or negating the Code of Federal Regulations for working Americans?

29 U.S.C. §654, United States Occupational Health and Safety Act of 1970. (Evidence in APP. "G", "H", "I")

4) By way of affirmation, has the Florida Fourth District Court of Appeals allowed the respondent Terminix International to deprive the petitioner of his constitutional right to freedom of religion? (Evidence in APP. "F")

United States Constitution First Amendment

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...

Title VII, the United States Civil Rights Act of 1964 (88-352).

Title 42 United States Code, Section 2000bb-1
Religious Freedom Restoration Act of 1993
§ 2000bb-1. Free exercise of religion protected

> 1. In general. Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

* * *

3. Judicial relief. A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

Table of Contents

Questions Presented i

Table of Contents iv

Table of Authorities vi

Preliminary Statement 1

Opinions Below 1

Jurisdiction 1

Constitutional and Statutory Provisions 2

Statement of the Case and Facts 2

Reasons for Granting the Petition 18

Summary of Argument 18

Argument 19

Conclusion 21

Appendix

App. A: Florida District Court of Appeal Order of Affirmance (Feb. 3, 2010) 1a

App. B: Florida Unemployment Appeals Commission Order (mailed to parties June 29, 2009) 3a

App. C: Agency for Workforce Innovation Decision of Appeals Referee (mailed to parties Apr. 28, 2009) 5a

App. D: Florida District Court of Appeal Order re motions for rehearing and rehearing en banc, clarification, and written opinion (Feb. 15, 2010) 13a

App. E: Supreme Court of Florida dismissal of Petition for Review (Feb. 24, 2010) 15a

App. F: Petitioner's Evidence of E.E.O.C. violations 17a

App. G: Petitioner's Evidence of O.S.H.A. violations 28a

App. H: "Out of power and 'unsafe,' Galveston starts long cleanup," http://www.cnn.com/2008/US/weather/09/15/hurricane.ike/ (visited Oct. 20, 2008) & Proof of Unsafe Employment-A 39a

Apx I: "Ike-Battered Texas Coast Remains Unsafe," http://www.cbsnews.com/stories/2008/09/22/national/main4467705.shtml (visited Oct. 20, 2008) & Proof of Unsafe Employment-B 42a

Table of Authorities

Cases

Board of Regents of State Colleges v. Roth,
408 U.S. 564 (1972) 19

Cole v. Florida Unemployment Commission,
5D03-1212 (Fla. 5th DCA 2003) 21

Fuentes v. Shevin,
407 U.S. 67 (1972) 19

Hobbie v. Florida Unemployment Appeals Commission,
480 U.S. 136 (1987) 7, 18, 20

Kelly v. Unemployment Appeals Commission,
823 So. 2d 275 (Fla. 5th DCA 2002) 21

Mario Rodriguez v. Florida Unemployment Appeals Commission,
3D01-476 (Fla. 3rd DCA 2001) 20

Porter v. Agency for Workforce Innovation,
1D08-0063 (Fla. 1st DCA 2009) 8

Tannariello v Federation of Public Employees,
437 So. 2d 799 (Fla. 4th DCA 1983) 7, 20

Uniweld Prods., Inc. v. Indus. Relations Commission,
277 So. 2d 827 (Fla. 4th DCA 1973) 22

W. M. Palmer Co. v. Meeks,
354 So. 2d 893 (Fla. 1st DCA 1978) 9

Wall v. Unemployment Appeals Commission,
682 So. 2d 1187 (Fla. 4th DCA 1996) 7, 20

Wallace v. Jaffree,
472 U.S. 38 (1985) 22

Constitution

U.S. Const. amend. I 2
U.S. Const. amend. V 2, 19
U.S. Const. amend. XIV 2, 19

State Statutes

§443.031, Fla. Stat.,
Rule of liberal construction 11, 22

§443.101(1), Fla. Stat.,
Disqualification for benefits 7, 22

§443.151(4)(a), Fla. Stat.,
Procedure concerning claims 9, 11, 16

§443.151(4)(c)(b), Fla. Stat.,
Review by commission 16

§443.171(3), Fla. Stat.,
Agency for workforce innovation 10

Federal Statutes

28 U.S.C. §1254(1) 2

28 U.S.C. §2101(c) 1

United States Occupational Health and Safety Act of 1970, 29 U.S.C. §654 (1970) 6, 21

Federal Regulations

Emergency Action Plans, 29 C.F.R. §1910.38 7

Florida Rules

Fla. Admin. Code R. 60BB-5.015, Notice of Hearing 11, 13, 16

Fla. Admin. Code R. 60BB-5.017, Nonappearance of Parties 11, 14

Fla. Admin. Code R. 60BB-5.023(1)(2), Independence 11, 15, 16

Fla. R. App. P. 9.030(a)(2)(b)(i) & (ii), Jurisdiction of Courts 10

Fla. R. Civ. P. 1.540(b), Mistakes; Inadvertence 11, 16

Fla. R. Jud. Admin. 2.215(f), Duty to Rule 10

Fla. R. Jud. Admin. 2.215(g), Duty to Expedite 10

Additional Authorities

AWI Form UCA Bulletin 6E 16

Report# 05-97-107-10-105 U.S. DOL Inspector General 4

Preliminary Statement

The following designations apply: Florida Unemployment Appeals Commission ("UAC"); Agency for Workforce Innovation ("AWI"), The State of Florida, District Court of Appeals ("DCA"). The Record on appeal: The submitted record by the Unemployment Appeals Commission on 8/31/2009.

Opinions Below

The Florida 4th DCA declined to provide a written opinion and as a result it is unpublished, the Florida Supreme Court declined the petitioner his right to invoke jurisdictional discretionary review and therefore was never published.

The orders of the petitioner's case are attached as Appendices A, D, & E.

Jurisdiction

The judgment of the Florida Fourth District Court of Appeals sought to be reviewed was entered on July 6, 2009, and the order denying the rehearing and rehearing En banc was entered on February 3, 2010.

The order requesting jurisdictional discretionary review by the State of Florida Supreme Court was entered on February 12, 2010, and the order denying the request for jurisdictional discretionary review was dated February 24, 2010.

This petition is timely under 28 U.S.C. §2101(c) and Supreme Court Rule 13.1 and Rule 13.3, because it is being filed within 90 days of the entry of the order

jurisdiction to review the judgment of the Florida Supreme Court pursuant to 28 U.S.C. §1254(1).

Constitutional and Statutory Provisions

The United States Constitution First Amendment:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...

The United States Constitution Fifth Amendment provides in pertinent part:

> No person shall be ... deprived of life, liberty, or property, without due process of law[.]

The United States Constitution Fourteenth Amendment provides in pertinent part:

> Section 1. ... No state shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case and Facts

The petitioner filed for unemployment compensation benefits against Terminix International, a company the petitioner was employed by for approximately 17 business days in 2008 and was denied, he then requested an appeal and had his appeal declined yet again by the Agency for Workforce Innovation deputy, the Unemployment Appeals Commission and then the Florida Fourth District Court of Appeals on February 3, 2010, a re hearing

and written opinion was also denied to the petitioner by the 4th DCA.

In September 2008, the petitioner documented safety hazards and submitted the findings to his manager Mr. Mickey Horton, the Director of Safety for Terminix International; this was part of the plaintiffs job since he was retained as a Safety trainer for the company, within 72 hours the petitioner was no longer employed. The petitioner also submitted concerns about violations of the United States Civil Rights Act and Constitutional right to Freedom of Religion.

The respondent Terminix International was forcing its religious beliefs of Christianity on all its employees, some examples would include the company slogan of "Honor God in all we do", which was posted throughout the workplace, provided to the petitioner during his orientation training in training manuals, expressly taught to the petitioner, and the slogan was printed on all Terminix employees paychecks nationwide, the president of the company went so far as to mail the proselytizing materials to the petitioner's home and to all Terminix employees.

The petitioner viewed this as forced Christianity by failure to equally recognize other deities such as Buddha for Buddhism, Muhammad for Muslims and even recognize the facts that agnostic and atheist beliefs do not acknowledge a formal "God" figure.

The Pantheon in Rome, Italy is the oldest church located by Vatican City and was constructed to worship Greek gods such as Zeus.

Terminix also by forcing Christian beliefs refuses to equally acknowledge Native American Indian Gods, Egyptian Gods, and since 1949, The Peoples Republic of China, its government is officially Atheist and the Middle East is largely Muslim.

All of which was properly documented and submitted to the company as well as Florida Agency for Workforce Innovation and is contained in the record on appeal.

Terminix International was notified in writing that they were not financially liable for the plaintiff's unemployment benefits and even hired an outside company to fight the plaintiff's request for benefits known as TALX Unemployment services.

The plaintiff deemed this retaliatory conduct for being a "Whistleblower".

The US Department of Labor, Office of the Inspector General issued a finding of fact on March 31, 1997. The report# 05-97-107-10-105 is listed as page 96 of the record on appeal sent to all parties.

The summery finding in its essence was that it was stated that "Workers who complained directly to their employers about workplace safety or health hazards were more likely to be fired from their jobs than workers that complained directly to OSHA".

Based upon 653 discriminations cases reviewed, nearly 82% of the workers that reported findings, were subsequently fired for complaining.

The petitioner has always stated that he was terminated due to reporting OSHA violations in writing and provided them with photographic evidence of the violations on Sunday September 15, 2008 to Mark South and Mickey Horton of Terminix, the petitioner's managers, this was confirmed by them and can be found on page 366 of the transcripts located in the record on appeal.

They received the documentation of the OSHA violations which are displayed on pages 491-495 on the record on appeal.

This proves that no disciplinary actions were taken by Terminix against the petitioner until after he had reported the violations to Terminix.

As far as the facts are concerned, the evidence shows that the petitioner never received any job description to his duties as listed on page 362 in the appeal on record by the petitioner's manager Mickey Horton.

Mr. Horton also admitted on tape on page 360 that the petitioner's job function was to be a "Trainer".

Terminix attempted to send the petitioner to Texas to engage in emergency operations for hurricane disaster operations, thereby attempting to place the petitioner's health and safety in harms way. APP. "H" & "I."

There was no job description provided to the petitioner and the petitioner's position was a "Trainer" as admitted by Terminix and not emergency response or hurricane relief efforts.

The State of Texas was evacuated and it was publicly stated by news agencies that Texas would be dangerous and took the lives of 26 residents.

Terminix demanded that the petitioner was ordered to work in that environment.

This was admitted in the record on appeal on page 352 by Mickey Horton, the petitioner's manager, it should also be noted that Texas was deemed unsafe during and immediately after Hurricane Ike.

The *29 U.S.C. §654*, OSHA General Duty Clause/ Occupational Health and Safety Act of 1970, clearly states that

> **(a) Each employer --**
>
> **(1) Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.**

The act also clearly states that

> *29 U.S.C. §654(c)(1)*- No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this act.

Terminix clearly violated the act as listed on pages 487-495 in the record on appeal. That action alone would be justification for the petitioner to leave the employment of Terminix and to be able to collect unemployment benefits justified as "Good cause" as provided under §443.101. The matter of worker safety was affirmed by the 4th DCA already in *Tannariello v. Federation of Public Employees, 437 So. 2d 799 (Fla. 4th DCA 1983)* and *Wall v. Unemployment Appeals Commission*, 682 So. 2d *1187 (Fla. 4th DCA 1996).*

As provided into evidence on page 53 in the record on appeal, the petitioner lists that Terminix violated OSHA 29 C.F.R. 1910.38, "An employer must designate and train employees to assist in a safe and orderly evacuation of other employees"

The EEOC violations against Terminix by the petitioner and submitted into evidence are listed on pages 104-133 in the record on appeal.

Another "Good cause" for the petitioner to claim benefits is religious discrimination as listed in *Hobbie v. Unemployment Appeals Commission, 480 U.S. 136 (1987)*, the petitioner proves that he suffered religious discrimination as listed on pages 108-113 which were violations of the petitioner's Title VII civil rights. The petitioner maintains and has testified on record that he was discharged for invoking his civil rights as well as reporting OSHA violations to the employer Terminix. APP. "F" & "G."

The petitioner was terminated verbally on September 16, 2008 by representatives and hiring agents of the employer, RMA incorporated.

RMA, Inc spoke to the petitioner on the night of September 16, 2008 and informed the petitioner that he was "Not a good fit" and that his employment was terminated.

Page 58 in the record on appeal clearly states in bold lettering that the petitioner "Did not resign", he simply acknowledged his recent termination from the agency that interviewed, hired and sent him the physical job offer, RMA inc.

Page 142 in the record on appeal shows that the investigator assigned to the OSHA whistleblower case Clarence Kugler writes "That you were fired".

Page 381 shows that the employers hiring agent was asked if the petitioner quit or was fired, RMA replied "Well I believe he was discharged", then he quickly changed his testimony.

The petitioner would like to state that this case in one aspect may be decided down to the point of if the petitioner was verbally fired on September 16, 2008 a mere 24 hours after submitting OSHA violations to his manager and thereby becoming a "Whistleblower", and the opposing side is claiming that the petitioner resigned on September 19, 2008 then the recent Jan 9, 2009 case of *Porter v. Agency for Workforce Innovation, 1D08-0063* would take precedence, the First District Court of Appeal ruled that if an employee gives notice and an employer terminates their employment prior to the employee resigning, they are entitled to unemployment benefits. In Case# 1Do8-0063, the courts overturned the negative ruling by the hearing officer and the UAC and reversed it in favor of the claimant, even citing past cases where essentially the

claimant was fired before their resignation took effect, at the heart of the issue was if the employer proved a voluntary quit, or was fired, this case is listed in pages 175-180 in the record on appeal.

If you review the case of *W. M. Palmer Co. v. Meeks, 354 So. 2d 893, 894 (Fla. 1st DCA 1978)*, the court ruled that hold that an employee who submits a voluntary notice of resignation is not disqualified from receipt of benefits when he or she is terminated prior to the effective date of the resignation.

In fact the gross misconduct and denial of the petitioner's rights to a proper hearing and procedures were categorically denied on numerous levels.

The petitioner states that Kia Albert the AWI Appeals deputy clerk as listed on page 310 in the record on appeal failed to perform her duties and send any and all evidence to the petitioners attorney Scott Behren "In sufficient time" as listed on page 258 in the record on appeals, in fact Ms Albert, a subcontracted AWI temporary employee, faxed over 50 pages of evidence to the petitioners attorney within 120 minutes of the telephone hearing itself.

This was listed on the hearing tape on page 237 & 242 in the appeal on record.

As far as the hearing officer who held the last hearing for the appeals division and her statements, evidence and ruling was not impartial.

Florida statutes clearly state that §443.151(4)(a) the agency for workforce innovation shall appoint one

or more impartial appeals referees in accordance with §443.171(3) to hear and decide claims.

The petitioner would like the court to refer to page 338 where the AWI hearing referee shows evidence of not remaining "Impartial" per the statute and denied the petitioners attorney his legal rights to question witnesses, when the referee was challenged by the petitioners attorney as listed on page 340 in the record on appeal, the hearing officer decided to stop the hearing.

The Fourth District Court of Appeal received the petitioner's case on July 6, 2009 and had documented that the court received all the briefs and motions on September 11, 2009. The petitioner waited over 60 days and then filed a motion for Expedited service which was granted on December 19, 2009.

The Fourth District Court then did not provide an opinion per *Rule 2.215(f) & (g)* till Feb 3, 2010, this action further substantiated the need for discretionary judicial review by the Florida Supreme Court due to an apparent breach of due process.

The petitioner also requested that the Florida Supreme Court review the petitioners appeal per the *Florida Rules of Appellate Procedure 9.030(a)(2)(b)(i) & (ii)*

> (i) to be of great public importance, or
> (ii) to have a great effect on the proper administration of justice;

The petitioner also demonstrated that the Agency for Workforce Innovation Appeals Referee who has

made numerous rulings affecting Florida unemployment petitioners whose cases were denied reversal by the Florida Unemployment Appeals Commission and subsequently may have filed appeals in every district court in Florida, signifies the fact that this appeal is to be of great public importance and to have a great effect on the proper administration of justice.

The petitioner is alleging that the hearing officer Mr. Steele Simpson violated *Florida Administrative Code 60BB-5.015(1), 60BB-5.017(2) & 60BB-5.023(1)(2), Florida State Statutes §443.031 & Florida Statutes §443.151(4)(a)* and violated the *Florida Rules for Civil Procedure Rule 1.540* by committing mistakes, excusable neglect, and other misconduct of an adverse party.

The hearing referee demonstrated his inability to remain impartial, an effect that may have had a cascading effect on all the cases he presided over and in effect May have been non reversed by the UAC and Florida District Courts, thereby Ultimately denying Florida residents unemployment compensation benefits statewide.

Florida Statute §443.031, Rule of liberal construction. This chapter shall be liberally construed in favor of a claimant of unemployment benefits who is unemployed through no fault of his or her own. Any doubt as to the proper construction of this chapter shall be resolved in favor of conformity with federal law.

The petitioner reiterated in the reply answer brief and in the facts of the case the respondent violated

federal *OSHA Occupational Health & Safety Act of 1970.*

The evidence is as follows, the petitioner is alleging that Florida administrative code and AWI policies were violated by the lower tribunal since the deputy clerk Ms Kia Albert failed to provide the petitioners attorney with submitted evidence "In sufficient time" per policies and faxed the evidence to the petitioners attorney 120 minutes prior to the actual hearing, when in fact the sole reason for the rescheduled hearing was AWI assured the petitioner and the petitioners attorney one month prior that both parties would receive the evidence, as well as the hearing referee violated numerous Florida Administrative codes.

On February 3, 2008, Mr. Steele Simpson, an AWI Appeals referee postponed the petitioners telephone hearing for the third time, since it was originally scheduled for December 14, 2008. Located as evidence in the record on appeal, on page 169, the AWI Referee Mr. Simpson assumed the responsibility of sending evidence to TALX on behalf of Terminix and the petitioner's attorney Scott Behren since the petitioner's attorney never received the submitted evidence by Terminix per AWI policy.

The record on appeal shows on page 169 that Mr. Simpson the AWI Referee stated "I am going to have to postpone the hearing and include the 12 pages from the employer and the 25 pages from the claimant attached to the next notice of hearing along with the information sent by the state", "I'll send the next notice of hearing; it'll be certified mail to ensure receipt to all parties."

Florida Administrative Code 60BB-5.015(2), Notice of Hearing

The appeals referee shall mail notice of the hearing to all parties at least 10 days prior to the date of the hearing.

Since the hearing referee clearly stated that he would attach the documents to the notice of hearing in a sworn recorded statement, which he failed to do, he also failed to deliver the documents at least 10 days before a hearing.

As of that point the State of Florida, AWI Appeals division took full responsibility of ensuring that the petitioners attorney received the evidence "In sufficient time for receipt prior to the hearing" as listed on page 27 in the record on appeal. The respondent Terminix had since December 15, 2008, at least 60 days and two scheduled telephone hearings prior to the hearing to ensure that the petitioners attorney receive the evidence and did not.

The petitioner and the petitioner's attorney received the notice of continuance and then the scheduled telephone hearing for March 12, 2009 from AWI referee Steele Simpson, the notice did not contain any evidence as promised by AWI and was the sole purpose of the continuance itself.

On page 182 in the record on appeal it states yet again that "To have any other documents considered, you must send a copy to the hearing officer and any party whose address is shown above, in sufficient time for receipt prior to the hearing". AWI assumed full responsibility for those actions.

The hearing on March 12, 2009 commenced as listed on page 228 in the record on appeal, the hearing again being conducted by Mr. Steele Simpson, AWI referee. On page 239 in the record on appeal the petitioner's attorney stated that he never received any information prior to 8:00 the morning of the actual hearing of March 12, 2009, not in sufficient time per policy.

The petitioner's attorney stated on page 242 in the record on appeal that he never received any documents until 10:16 Am, less than 120 minutes prior to the hearing; the documents were faxed by Ms. Kia Albert, the AWI Deputy Clerk.

The next document the petitioner and the petitioner's attorney received was a notice of "Dismissal without Prejudice" locate in the record on appeal on page 249 from Ms Kia Albert on behalf of Mr. Steele Simpson, the AWI appeals referee. The dismissal stated that The petitioner indicated an inability to attend a hearing to prosecute the appeal.

Florida Administrative Code 60BB-5.017(2), Nonappearance of Parties.

Failure of the petitioner to appear at the hearing shall constitute grounds for dismissal of the appeal.

The petitioner never failed to appear for any telephone hearing nor is there any evidence or transcript that proves that assertion. The AWI referee thereby made an erroneous statement and improperly cancelled the petitioners appeal hearing rights.

On page 246 in the record on appeal, the hearing referee stated twice that "You understand that I've been directed to inform both parties it is being taken under advisement and you'll be notified of the next step."

This was yet another clear breach of *Florida Administrative Code 60BB-5.023*

(1) In the conduct of hearings and rendering of decisions in proceedings under these rules, the appeals referee shall act as an impartial, independent hearing officer free from any outside influence.

(2) No party to a proceeding or any other person who has a direct or indirect interest in a proceeding or any attorney or representative of such person or any public officer or employee shall communicate by any means with the appeals referee assigned to the appeal concerning the merits of the appeal unless all parties are present or have waived their right to be present. Clearly the record shows that the referee had received outside influence right in the middle of the hearing itself.

On page 252 in the record on appeal the petitioner was forced to formally the AWI Appeals Division on March 31, 2009 to request that he was requesting that a new hearing be scheduled.

Located on page 255 in the record on appeal is a "Recision Decision" from AWI Referee Mr. Steele Simpson stated that "A timely request for reopening the appeal was received from a party alleging good cause for not appearing at the last scheduled hearing."

The record on appeal clearly states that on page 239 that the referee spoke directly with the petitioner and was in fact present; therefore the referee again made an erroneous statement in writing as listed in the record on appeal on page 255.

Page 227 in the record on appeal there is a *AWI Form UCA Bulletin 6E* which states within that the plaintiffs rights at the hearing, "As a party, you have the right to; E. Examine and object to evidence presented"

Evidence that must be submitted in sufficient time for receipt prior to the hearing.

The petitioner states that the AWI referee and Deputy Clerks became "An Interested party as listed in *Florida Statutes §443.151(4)(a)* when they assumed the duties of sending evidence out on behalf of the petitioner and respondent and thereby the referee was not an "Impartial referee" as listed in Florida Statutes *§443.151(4)(a)*.

The petitioner is asserting that the Unemployment Appeals Commission (UAC) based its opinion upon erroneous information supplied to them, the UAC per *Florida Statutes §443.151(4)(C)(b), Review by commission*, "Initiate a review of the decision of the appeals referee".

The appeals referee representing the Agency For Workforce Innovation, Appeals Division Mr. Steel Simpson and Ms Kia Albert arbitrarily denied the petitioner of His due process, broke *Florida Administrative Code 60BB-5.015(1) & 60BB-5.023(1)(2)*, and violated the *Florida Rules For Civil*

Procedure Rule 1.540 by committing mistakes, excusable neglect, and other misconduct of an adverse party.

Reasons for Granting the Petition

The petitioner respectfully submits that there are three reasons why this court should grant their petition for Writ of Certiorari.

First, the affirmation of the lower tribunal's opinion is a direct conflict of this courts ruling in *Hobbie v. Florida Unemployment Appeals Commission, 480 U.S. 136 (1987).*

Second, the opinion rendered against the plaintiff was a direct conflict with its opinions of at least three out of five district courts in Florida, viewed as "Split Decisions" of which the Florida Supreme Court erred in not granting discretionary review to resolve the conflicts, which has set precedence in worker safety claims to unemployment benefits throughout the state of Florida and thereby affecting the release of congressionally approved benefits to its citizens, the State then decided an important question of federal law by allowing the respondent Terminix, International to arbitrarily violate federal law with the state sanctioning the violations due to its affirmation.

Third, the petitioner was denied his constitutional right to due process and freedom of religion.

This matter needs to be resolved by this court to avoid setting precedence nationwide and to restore the petitioners United States Constitutional rights.

Summary of Argument

The 4th DCA affirmation in its opinion has created a conflict of at least two of their own past rulings

dealing with safety in the workplace and petitioners losing their employment due to "Good cause," thereby creating a conflict within the court and created a conflict with previous opinions by the 3rd DCA, 5th DCA and the United States Supreme Court.

The petitioner provided the 4th DCA with a Notice of Supplemental Authority on February 2, 2010 to bring the conflicting cases to the courts attention, the court then rendered an affirmed opinion without providing the petitioner with a written opinion within 24 hours of said notice.

The petitioner was denied his rights to "Procedural Due Process' afforded by the U.S. Constitution, 5th & 14th amendments, "Promoting fairness in dispute resolution" as listed in *Fuentes v. Shevin, 407 U.S. 67 (1972)*, and a legitimate claim of entitlement" to a benefit - *Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972).*

Argument

The petitioner believes the lower tribunals were incorrect due to the following reasons. The petitioner's rights to procedural due process were constantly violated during the petitioners hearing appeal process, and as a result the Unemployment Appeals Commission and 4th DCA affirmed the hearing officers decision, even after the petitioner submitted substantial amounts of conclusive evidence against his former employer and the Agency for Workforce Innovation which was referenced in the petitioners record on appeal.

The 4th DCA itself had passed written opinions on the issue of employees working in an unsafe environment such as working alone in a building, working in an adjoining building where burglaries had occurred and the 4th DCA reversed the lower tribunal's opinions and plaintiffs were granted unemployment benefits for leaving work for "Good cause".

Employees who have quit due to fear for their personal safety due to the location of their employment have been found to have quit with good cause attributable to their employer. In *Tannariello v Federation of Public Employees, et al., 437 So. 2d 799 (Fla. 4th DCA 1983)* a woman who quit her job due to her fear of working in the location of her employment, was allowed benefits.

In *Wall v. Unemployment Appeals Commission, et al., 682 So. 2d 1187 (Fla. 4th DCA 1996)* an employee who left her job due to fears caused by multiple burglaries in the store adjacent to her office, was held to have left for good cause.

In *Mario Rodriguez v. Florida Unemployment Appeals Commission, 3D01-476-(Fla. 3rd DCA 2001)*, the 3rd DCA reversed the opinion of the lower tribunal because the plaintiff lost his employment due to "Good cause" for bringing safety concerns to his employers attention.

In *Hobbie v. Florida Unemployment Appeals Commission, 480 U.S. 136 (1987),* the United States Supreme Court reversed the lower tribunal for an employee being terminated due to invoking her constitutional right of Freedom of religion, of which the plaintiff was equally discriminated against due to

his religious assertions and beliefs. The petitioners former employer proved in the record on appeal that they put the petitioner directly in harms way on numerous occasions and thereby broke federal statutes referred to as *the United States Occupational Health and Safety Act of 1970, 29 U.S.C. §654.*

Conclusion

The relief sought is for the United States Supreme Court to overturn the Florida Fourth District Court of Appeals opinion and reverse it, thereby having the petitioner's opinion become rendered in accordance with the previous opinions of 3rd, 4th &. 5th DCA Florida District Courts of Appeal and United States Supreme Court, thereby harmonizing the decision of the 4th DCA opinion with the other courts rulings by reversing the conflicting opinion. The 5th DCA granted benefits for "Good cause" due to an employee not receiving her paycheck, the court ruled in *Cole v. Florida Unemployment Commission, 5D03-1212 (Fla. 5th DCA 2003)* that failure to comply with a salary agreement is sufficient cause to compel the average employee to leave his or her employment and, therefore constitutes good cause attributable to the employer to justify an award of benefits to the employee." *Kelly v. Unemployment Appeals Commission, 823 So. 2d 275, 279 (Fla. 5th DCA 2002).*

The 4th DCA granted benefits to claimants for simply being in an adjoining building or working alone, the petitioner was in fact directly in harms way and directed to work in the aftermath of hurricane Ike where lives were lost.

The petitioner provided the 4th DCA with a Notice of Supplemental Authority on February 2, 2010 to bring the conflicting cases to the courts attention causing a breach of decisional harmony, the 4th DCA within 24 hours, affirmed the decision of the lower tribunal and denied the petitioner a rehearing and written opinion.

The law is quite clear on this matter; Florida State Statute pertaining to unemployment compensation benefits which state: *Florida Statute §443.031: Rule of liberal construction.* -- This chapter shall be liberally construed in favor of a claimant of unemployment benefits who is unemployed through no fault of his or her own.

Fla. Stat. § 443.101(1)(a) (2006). "To voluntarily leave employment for good cause, the cause must be one which would reasonably impel the average able-bodied qualified worker to give up his or her employment . . . The applicable standards are the standards of reasonableness as applied to the average man or woman, and not to the supersensitive." *Uniweld Prods., Inc. v. Indus. Relations Commission, 277 So. 2d 827, 829 (Fla. 4th DCA 1973).*

The petitioner has clearly presented to the court that his procedural due process was violated and was unemployed under the provisions listed in *§443.101(1).*

Disqualification for benefits.

The petitioner was unemployed due to "Good Cause" attributable to the employer, and therefore invoking *§443.031* entitling the claimant to his

unemployment compensation benefits as specified by law.

> **"Just as the right to speak and the right to refrain from speaking are complementary components of a broader concept of individual freedom, so also the individual's freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority."**

Justice John Paul Stevens
U. S. Supreme Court Justice
Source: *Wallace v. Jaffree, 472 U.S. 38 (1985)*

Respectfully submitted to the court.

Howard A. Fox
P.O. Box 742273
Boynton Beach, FL 33474
(407) 267-8194

Petitioner pro se

APPENDIX

APPENDIX

TABLE OF CONTENTS

App. A: Florida District Court of Appeal Order of Affirmance (Feb. 3, 2010) 1a

App. B: Florida Unemployment Appeals Commission Order (mailed to parties June 29, 2009) 3a

App. C: Agency for Workforce Innovation Decision of Appeals Referee (mailed to parties Apr. 28, 2009) 5a

App. D: Florida District Court of Appeal Order re motions for rehearing and rehearing en banc, clarification, and written opinion (Feb. 15, 2010) 13a

App. E: Supreme Court of Florida dismissal of Petition for Review (Feb. 24, 2010) 15a

App. F: Petitioner's Evidence of E.E.O.C. violations 17a

App. G: Petitioner's Evidence of O.S.H.A. violations 28a

App. H: "Out of power and 'unsafe,' Galveston starts long cleanup," http://www.cnn.com/2008/US/weather/09/15/hurricane.ike/ (visited Oct. 20, 2008) & Proof of Unsafe Employment-A 39a

Apx I: "Ike-Battered Texas Coast Remains Unsafe," http://www.cbsnews.com/stories/2008/09/22/national/main4467705.shtml (visited Oct. 20, 2008) & Proof of Unsafe Employment-B 42a

APPENDIX A

DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2010

No. 4D09-2676

[February 3, 2010]

HOWARD A. FOX,
Appellant,

v.

STATE OF FLORIDA, UNEMPLOYMENT APPEALS COMMISSION,
Appellee.

PER CURIAM.

Affirmed.

FARMER, HAZOURI and CIKLIN, JJ., concur.

* * *

Appeal from the State of Florida, Unemployment Appeals Commission; U.A.C. No. 09-06993.

Howard A. Fox, Boynton Beach, pro se.

Louis A. Gutierrez, Tallahassee, for appellee.

Not final until disposition of timely filed motion for rehearing.

APPENDIX B

STATE OF FLORIDA
UNEMPLOYMENT APPEALS COMMISSION

U.A.C. Order No. 09-06993
Referee Decision No. 09-37144U

[Mailed to parties June 29, 2009]

In the matter of:	)
	)
Claimant/Appellant	)
HOWARD A FOX	)
	)
vs.	)
	)
Employer/Appellee	)
THE TERMINIX INTERNATIONAL CO	)
Employer NO. -2007538	)
	)
UCCO -3659/138069935822430937144	)
	)

ORDER OF
UNEMPLOYMENT APPEALS COMMISSION

NO. 09-06993

Pursuant to the appeal filed in this case, the Unemployment Appeals Commission has conducted a complete review of the evidentiary hearing record and decision of the appeals referee. See §443.151(4)(c), Fla.

Stat. By law, the Commission's review is limited to those matters that were presented to the referee and are contained in the official record.

On appeal to the Commission, the claimant submitted evidence which had not been previously presented to the referee. The parties were advised prior to the hearing that the hearing was their only opportunity to present all of their evidence in support of their case. Florida Administrative Code Rule 60BB-7.005 provides that the Commission can consider newly discovered evidence only upon a showing that it is material to the outcome of the case and could not have been discovered prior to the hearing by an exercise of due diligence. The Commission did not consider the additional evidence because it does not meet the requirements of the rule.

On appeal to the Commission, the claimant requests another hearing to present additional evidence. The parties were advised prior to the hearing that the hearing was their only opportunity to present all of their evidence in support of their case to the referee. Upon review of the hearing record and the arguments on appeal, it has not been shown that the claimant is entitled to an additional hearing. The request is, therefore, denied.

APPENDIX C

[SEAL]

AGENCY FOR WORKFORCE INNOVATION
Office of Appeals
MSC 347 CALDWELL BUILDING
107 EAST MADISON STREET
TALLAHASSEE FL 32399-4143

[Mailed to parties April 28, 2009]

IMPORTANT:	For free translation assistance, you may call 1-800-204-2418. Please do not delay, as there is a limited time to appeal.
IMPORTANTE:	Para recibir ayuda gratuita con traducciones, puede llamar al 1-800-204-2418. Por favor hágalo lo antes posible, ya que el tiempo para apelar es limitado.
ENPÒTAN:	Pou yon intèpret asisté ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pràn àmpil tàn, paské tàn limitè pou ou ranpli apèl la.

SSN: [redacted]
Employer Account No.: 2007538

Docket No. **2009-37144U**
Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellant
HOWARD A FOX
[redacted]
BOYNTON BEACH FL 33437

BEHREN & ASSOCIATES
C/O SCOTT M BEHREN
2853 EXECUTIVE PARK DR STE 103
WESTON FL 33331

EMPLOYER/Appellee

THE TERMINIX INTERNATIONAL CO
C/O TALX UNEMPLOYMENT SERVICES
PO BOX 749000
ARVADA CO 80006-9000

BENEFIT PAYMENT CONT UNIT
AGENCY FOR WORKFORCE INNOVATION
TALLAHASSEE FL 32399

APPEARANCES: CLAIMANT & EMPLOYER
LOCAL OFFICE #: 3659-0

DECISION OF APPEALS REFEREE

Important appeal rights are explained at the end of this decision.
Derechos de apelación importantes son explicados al final de esta decisión.

Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.

Issues Involved: SEPARATION: Whether the claimant was discharged for misconduct connected with work or voluntarily left work without good cause as defined in the statute, pursuant to Sections 443.101(1), (9), (10), (11); 443.036(29), Florida Statutes; Rule 60BB-3.020, Florida Administrative Code.

Findings of Fact: The claimant worked for a pest control company from August 2008 through September 16, 2008. The claimant was provided with a company cell phone because the employer had the expectation that the claimant be readily accessible when called. The claimant submitted a list of OSHA violations that he observed at the jobsite. The employer did not immediately respond to the claimant's report. Toward the end of his employment, the employer advised the claimant that he needed to be accessible on the weekends. The discussion occurred because the employer had not been able to contact the claimant during an earlier weekend. The claimant subsequently emailed the employer, on September 17, 2008, stating that he felt it was better to part ways to avoid further hardships. The employer subsequently discovered that the claimant had returned his work items, including phone and computer.

Conclusions of Law: The unemployment compensation law provides that a claimant who voluntarily left work without good cause or was discharged for misconduct connected with the work will be disqualified for benefits.

In determining whether the claimant quit, was discharged or was laid off due to lack of work, the referee must decide the moving party in the matter. The claimant suggested, via electronic mail, that he and the employer part ways in order to avoid future issues of conflict, thereby initiating the separation. The referee concludes that the claimant was the moving party in the separation. Therefore, the claimant is considered to have voluntarily quit. The burden of proof is on the claimant who voluntarily quit work to show by a preponderance of the evidence that quitting was with good cause. Uniweld Products, Inc., v. Industrial Relations Commission, 277 So.2d 827 (Fla. 4th DCA 1973). In determining whether an individual quit with good cause attributable to the employer, the standards of review are those that apply to the average reasonable person.

It was shown that the claimant quit due to dissatisfaction with the employer's availability requirements, specifically, the expectation that he be accessible during the weekends. Although, the reco[ ] the claimant disagreed with this expectation, it has not been demonstrated that the requirement violated any term of the claimant's employment. Further, it was revealed that during the weekend in question, the employer merely contacted the claimant with no expectation that he report to work.

Consideration was given to the claimant's assertion that he was discharged from the job. However, the record is devoid of any evidence confirming that a termination occurred. Conversely, the evidence includes an email from the claimant addressed to the employer, which would logically lead a reasonable and prudent person to conclude that the claimant has

resigned from the job. Additional consideration was given to the email purportedly sent to the claimant from an OSHA investigator. The record demonstrates that the OSHA investigator was not presented as a witness for the hearing. Consequently, this document amounts to hearsay. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. Section 120.57, Florida Statutes; Rule 60BB-5.024(3)(d), Florida Administrative Code.

Consideration was also given to OSHA's involvement and investigation on this case. However, the record demonstrates that this occurrence took place after the separation. Therefore, the hearing officer does not have jurisdiction to consider these matters.

While the claimant may have had good personal reasons for quitting, it has not been shown that the decision to quit was impelled by any action on the part of the employer. Accordingly, the claimant has been properly disqualified from the receipt of unemployment benefits.

The hearing officer was presented with conflicting testimony regarding material issues of fact and is charged with resolving these conflicts. The Unemployment Appeals Commission has set forth factors to be considered in resolving credibility questions. These factors include the witness' opportunity and capacity to observe the event or act in question; any prior inconsistent statement by the witness; witness bias or lack of bias; the contradiction of the witness' version of events by other evidence or

its consistency with other evidence; the inherent improbability of the witness' version of events; and the witness' demeanor. Upon considering these factors, the hearing officer finds the testimony of the employer to be more credible. Therefore, material conflicts in the evidence are resolved in favor of the employer.

The claimant received legal representation pro bono. The claimant and representative's arrangement has been acknowledged and approved.

Decision: The determination dated October 30, 2008 is AFFIRMED. The claimant is disqualified from the receipt of unemployment benefits.

If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the Agency and set forth in a separate overpayment determination, unless specified in this decision. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

DANITZA GONZALES
Appeals Referee

This is to certify that a copy of the above decision was mailed to the last known address of each interested party on April 28, 2009.

By: /s/ Yvette Harvey
YVETTE HARVEY, Deputy Clerk

IMPORTANT - APPEAL RIGHTS: This decision will become final unless a written request for review or reopening is filed within 20 calendar days after the mailing date shown. If the 20th day is a Saturday, Sunday or holiday defined in F.A.C. 60BB-6.004, filing may be made on the next day that is not a Saturday, Sunday or holiday. If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the Agency and set forth in a separate overpayment determination. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

A party who did not attend the hearing for good cause may request reopening, including the reason for not attending, at **www.fluidnow.com/appeals** or by writing to the address at the top of this decision. The date the confirmation number is generated will be the filing date of a request for reopening on the Appeals Web Site.

A party who attended the hearing and received an adverse decision may file a request for review to the Unemployment Appeals Commission, Suite 101 Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida 32399-4151; (Fax: 850-488-2123); **nttps://www.uac.fl.gov/Appeal.aspx.** If mailed, the postmark date will be the filing date. If faxed, hand-delivered, delivered by courier service other than the United States Postal Service, or submitted via the Internet, the date of receipt will be the filing date. To avoid delay, include the docket number and claimant's social security number. A party requesting review should specify any

and all allegations of error with respect to the referee's decision, and provide factual and/or legal support for these challenges. Allegations of error not specifically set forth in the request for review may be considered waived.

APPENDIX D

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT
1525 PALM BEACH LAKES BLVD.
WEST PALM BEACH, FL 33401

CASE NO.: 4D09-2676
L.T. No. : 09-6993

[Filed February 15, 2010]

HOWARD A. FOX	)
Appellant / Petitioner(s),	)
	)
v.	)
	)
UNEMPLOYMENT APPEALS	)
COMMISSION, ET AL.	)
Appellee / Respondent(s).	)
	)

BY ORDER OF THE COURT:

ORDERED that appellant's motion filed February 3, 2010, for rehearing, clarification and written opinion is hereby denied; further,

ORDERED that appellant's motion filed February 5, 2010, for rehearing en banc and clarification and written opinion is hereby denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:
Howard Fox
The Terminix International Co.
Unemployment Appeals Comm.

ct

[SEAL]

/s/ Marilyn Beuttenmuller
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

APPENDIX E

Supreme Court of Florida

CASE NO.: SC10-266
Lower Tribunal No(s).: 4D09-2676, 09-6993

[WEDNESDAY, FEBRUARY 24, 2010]

HOWARD A. FOX
Petitioner(s)

vs.

FLORIDA
UNEMPLOYMENT APPEALS
COMMISSION, ET AL.
Respondent(s)

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing will be entertained by the Court.

A True Copy
Test:

[SEAL]

/s/ Thomas D. Hall
Thomas D. Hall

Clerk, Supreme Court

ab
Served:

HOWARD A. FOX
LOUIS ALAN GUTIERREZ
HON. MARILYN BEUTTENMULLER, CLERK

APPENDIX F

http://www.eeoc.gov/policy/docs/qanda_religion.html

[Visited October 3, 2008]

The U.S. Equal Employment Opportunity Commission

Questions and Answers: Religious Discrimination in the Workplace

Title VII of the Civil Rights Act of 1964 prohibits employers with at least 15 employees, as well as employment agencies and unions, from discriminating in employment based on race, color, religion, sex, and national origin. It also prohibits retaliation against persons who complain of discrimination or participate in an EEO investigation. With respect to religion, Title VII prohibits:

* * *

- subjecting employees to harassment because of their religious beliefs or practices – or lack thereof – or because of the religious practices or beliefs of people with whom they associate (e.g., relatives, friends, etc.);

* * *

- retaliating against an applicant or employee who has engaged in protected activity, including participation (e.g., filing an EEO charge or testifying as a witness in someone else's EEO matter), or opposition to religious

discrimination (e.g., complaining to human resources department about alleged religious discrimination).

* * *

1. What is "religion" under Title VII?

Title VII protects all aspects of religious observance and practice as well as belief and defines religion very broadly for purposes of determining what the law covers. For purposes of Title VII, religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, and Buddhism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others. An employee's belief or practice can be "religious" under Title VII even if the employee is affiliated with a religious group that does not espouse or recognize that individual's belief or practice, or if few – or no – other people adhere to it. Title VII's protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs.

Religious beliefs include theistic beliefs (i.e. those that include a belief in God) as well as non-theistic "moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views." * * *

Religious observances or practices include, for example, attending worship services, praying, wearing religious garb or symbols, displaying religious objects, adhering to certain dietary rules, **proselytizing** or other forms of religious expression, or refraining from

certain activities. Whether a practice is religious depends on the employee's motivation. * * *

Discrimination based on religion within the meaning of Title VII could include, for example: not hiring an otherwise qualified applicant because he is a self-described evangelical Christian; a Jewish supervisor denying a promotion to a qualified non-Jewish employee because the supervisor wishes to give a preference based on religion to a fellow Jewish employee; or, terminating an employee because he told the employer that he recently converted to the Baha'i Faith.

Similarly, requests for accommodation of a "religious" belief or practice could include, for example: a Catholic employee requesting a schedule change so that he can attend church services on Good Friday; a Muslim employee requesting an exception to the company's dress and grooming code allowing her to wear her headscarf, or a Hindu employee requesting an exception allowing her to wear her bindi (religious forehead marking); an atheist asking to be excused from the religious invocation offered at the beginning of staff meetings; an adherent to Native American spiritual beliefs seeking unpaid leave to attend a ritual ceremony; or an employee who identifies as Christian but is not affiliated with a particular sect or denomination requests accommodation of his religious belief that working on his Sabbath is prohibited.

* * *

Terminix International CO L.P.

'HONOR GOD IN ALL WE DO"

860 Ridge Lake Blvd.
Memphis, TN 38120

Pay Period: 09/01/08 - 09/30/08

FOX, HOWARD A

Employee ID - 99895018

Check No. 3499058

AMOUNT OF CHECK	$******210.60

GROSS WAGES	TAXABLE EARNINGS	NET PAY
210.60		210.60

DESCRIPTION	HOURS	GROSS WAGES	YEAR-TO-DATE	DESCRIPTION	TAXES/DED	YEAR-TO-DATE
Regular			3,041.67	-------- Gross --------	210.60	4,468.91
Regular			1,216.64	Federal Income Tax		678.08
EXP - Mileag		210.60	210.60	Federal FICA Withheld		264.02
				Federal Medicare Withheld		61.75

TERMINIX

To all Terminix Associates:

Let me start by thanking each of you for everything you do for Terminix every day. It's no exaggeration to say that our success belongs to you, your hard work – and the integrity that stands at the foundation of our company.

What other organization can say what we can: that we are a company based in belief. We live our values and principles; our commitment to honesty, fairness and decency. Nothing is more important than those qualities. But sometimes we need to be reminded of what should be ingrained in each of us.

Lately, you've seen messages reminding us of the integrity that is expected – no, demanded – of us, notably ServiceMaster CEO Pat Spainhour's recent email restating our compliance and ethics policy. He stressed in the strongest terms our Company's no-tolerance stand about behavior that falls below our rigorous ethical standards. And, speaking for Terminix, I emphatically agree.

Make no mistake: Who we are as a company is defined by who we are as individuals. That's why we must demonstrate the highest integrity and honesty every day. But those expectations don't exist in a vacuum: To help associates and managers walk the right path, I'd like you to visit *svmpeople.com* and remind yourself about the clearly-stated principles that guide us.

Those policies are just the first of many resources available to address your questions about dishonorable

or inappropriate conduct, or to report your concerns, if necessary. Your manager, the Human Resources department, the Compliance and Ethics function, the Legal Department staff, or any member of the Executive Committee, are all there to help you. You can also report concerns in a call to the **Compliance Hotline at 800-937-9888** – anonymously if you need to. In any case, let me state it plainly: This is what is expected of you:

- All associates must promptly disclose or report any suspected illegal or unethical conduct
- Managers who receive such reports must take immediate action.

Think of it this way: We have the power – and the obligation – to continue to make this the company what it is: honorable, ethical and strong. As we **"Honor God in all we do,"** we also honor one another. It's not just talk: It's a belief that each of us carries into how we do our jobs, and how we live our lives. And it's up to you.

/s/ Thomas G. Brackett
Tom Brackett
Terminix President and COO

TERMINIX
ASPIRE
Advanced Study Program for
Integrated Regionalized Education

Participant Manual

* * *

Unit 1-2 ASPIRE
Company Information
Objectives ✧**Honor God in all we do** ✡Do the right thing ✡Treat each person with dignity and respect ✡Respect each person's spirituality ✡Protect and maintain our world

✔"Do the right thing."

- We all know the difference between right and wrong.
- Through the choices we make every day we show a heartfelt concern for others.
- We do an honest day's work, tell the truth, obey the law, and don't cut corners — even if it puts us at a competitive disadvantage.

* * *

http://www.servicemaster.com/library/aboutUs/contact.dsp

[Visited October 3, 2008]

Contact Us

If you'd like to get in touch with us for any reason, contact us at the following:

TruGreen: http://www.trugreen.com/tg/offers/contact.dsp

Terminix: http://www.terminix.com/customer/

Merry Maids: http://www.merrymaids.com/company/contactus.php

ServiceMaster Clean: http://www.servicemasterclean.com/ut/contactus.asp

Furniture Medic: http://www.furnituremedic.com/ut/contact.asp

American Home Shield: http://www.ahscustomer.com/contactUs/ContactUs.ahs

AmeriSpec: http://www.amerispec.com/

Phone
1-888-WE SERVE (1-888-937-3783).

Mailing Address
The ServiceMaster Company
ATTN: Internet Marketing Group

860 Ridge Lake Boulevard, MS A4-4081
Memphis, Tennessee 38120

As always, we appreciate your feedback.

http://corporate.servicemaster.com /overview_objectives.asp

[Visited September 18, 2008]

Objectives

The ServiceMaster philosophy is expressed in four objectives.

Honor God in All We Do

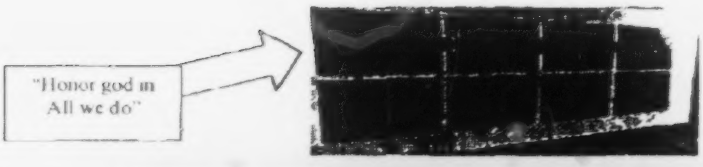
- **Do the right thing.**

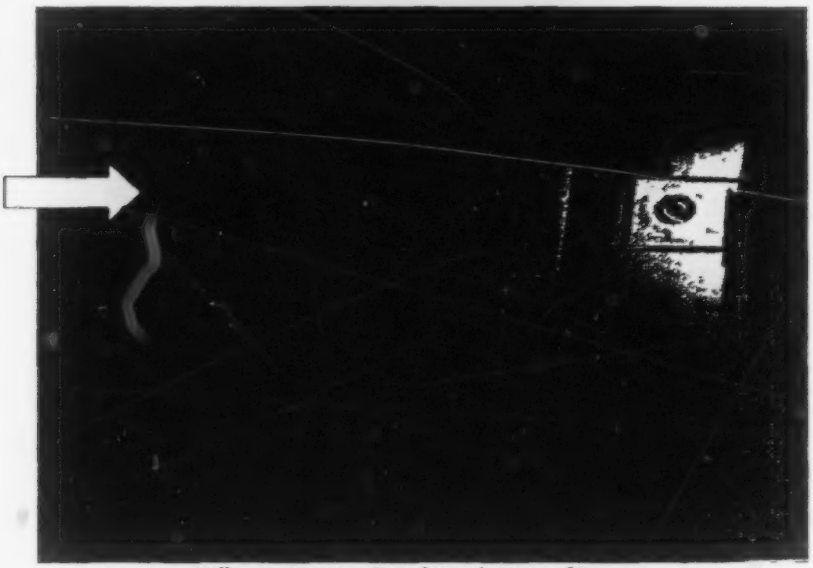
  Each of us knows the difference between right and wrong. Through the choices we make every day on the job, we show a heart-felt concern for the needs and expectations of others. We do an honest day's work. We tell the truth. We obey the law. We don't cut corners, even if it puts us at a competitive disadvantage.

- **Treat each person with dignity and respect.**

  No one has to earn the right to be greeted warmly or to be listened to sincerely. We are each born with a basic dignity – and we affirm that fundamental goodness in ourselves by honoring it in others. We value and recognize the contribution that each person makes to the success of our team.

* * *





Hallway entrance in Boca Raton location of Terminix
1225 Broken Sound Parkway, NW, STE E, Boca Raton, Florida 33487

BEST AVAILABLE COPY

APPENDIX G

http://www.oig.dol.gov/public/reports/oa/pre_1998/05-97-107-10-105s.htm

[Visited July 7, 2008 11:52:03 PM]

Whistleblower Protection Under Section 11(c) of the Occupational Safety and Health Act

U.S. Department of Labor
Office of Inspector General

Audit Report

WHISTLEBLOWER PROTECTION UNDER SECTION 11(C) OF THE OCCUPATIONAL SAFETY AND HEALTH ACT

This document is a summary of a printed document. The printed document may contain charts and photographs which are not reproduced in this electronic version. If you require the printed version of this document, contact the Freedom of Information Act Officer, Office of Inspector General, U.S. Department of Labor, Washington, DC 20210.

This report reflects the findings of the Office of Inspector General at the time that the audit report was issued. More current information may

be available as a result of the resolution of this audit by the Department of Labor program agency and the auditee. For further information concerning the resolution of this report's findings, please contact the program agency.

Report Title: Whistleblower Protection Under Section 11(C) of the Occupational Safety and Health Act

Report Number: 05-97-107-10-105

Issue Date: March 31, 1997

Although the Occupational Safety and Health Administration (OSHA) is responsible for protecting workers' safety and health, OSHA cannot possibly inspect every work place in the country or identify every potential health and safety hazard that might exist. For these reasons, it is critical that workers feel free to raise health and safety concerns without fear of retaliation by their employers.

Section 11(c) of the Occupational Safety and Health Act (OSH Act) prohibits retaliation by employers against workers who "blow the whistle" by exposing health and safety hazards. Workers who believe they were unfairly treated because they complained about unsafe or unhealthy working conditions can file a complaint with OSHA. * * *

The OIG performed an audit of OSHA's 11(c) whistleblower protection program to examine the extent to which workers were protected by the program and to review the reasonableness and adequacy of OSHA's actions resulting in decisions to

settle, dismiss and withdraw employee complaints for the period October 1, 1994 to September 30, 1995.

The OIG audit found that workers who complained directly to their employers about workplace safety or health hazards were more likely to be fired from their jobs than workers who directly complained to OSHA. Based on the random sample of 653 discrimination cases we reviewed, **nearly 82 percent of the workers who had asked their employers to correct safety/health hazards stated that they were subsequently fired in retaliation for complaining.** Approximately 51 percent of employees who complained directly to OSHA stated that they were improperly terminated from their jobs. * * *

* * *

Our audit also found that OSHA's current operating practices may prevent whistleblowers from obtaining "all appropriate relief," as provided by the OSH Act for complainants with merit cases. OSHA may settle cases too early because of legislated time constraints for conducting investigations. In addition, many case files contained incomplete documentation of workers' lost back wages, and cases referred for litigation were often rejected. * * *

* * *

Yahoo!® Mail
Classic

Sunday, September 14, 2008 5:45 PM
Fume Branch Pictures

From: "Fox, Howard" <HFox@terminix.com>
To: "Horton, Mickey" <mhorton@terminix.com>
Terminix Observations-Fume Branch.pdf (2111KB)

FYI to keep you in the loop, these were sent to M South first too.
H Fox

Sent From My Blackberry
Howard Fox
Safety Training Manager

----- Original Message -----
From: Howard Fox <howardadamfox@yahoo.com>
To: Fox, Howard
Sent: Sun Sep 14 16:19:45 2008
Subject: Fume Branch Pictures

Terminix Observations (Fume branch)

1926.501(b)(1)

"Unprotected sides and edges." Each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8 m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.

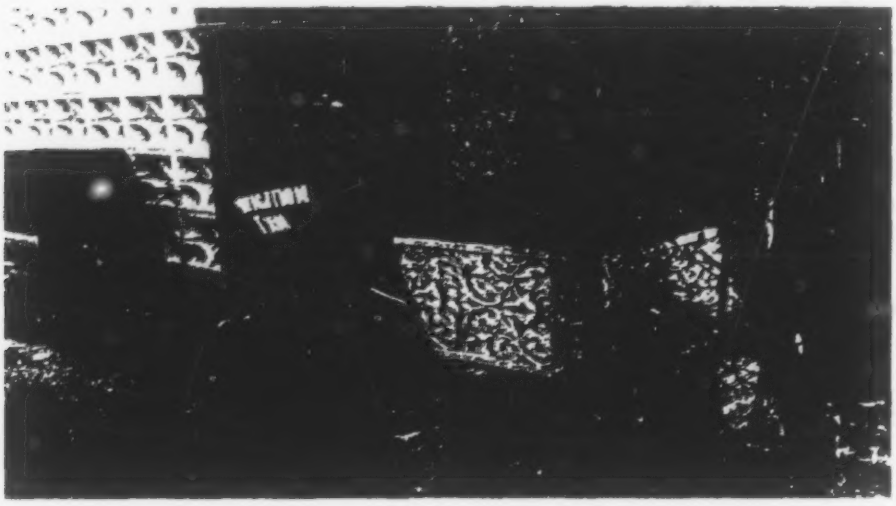
Employees broke off grounding prongs to fans.

1926.404(b)(1)(iii)(C)

Each cord set, attachment cap, plug and receptacle of cord sets, and any equipment connected by cord and plug, except cord sets and receptacles which are fixed and not exposed to damage, shall be visually inspected before each day's use for external defects, such as deformed or missing pins or insulation damage, and for indications of possible internal damage. Equipment found damaged or defective shall not be used until repaired

1926.404(b)(1)(iii)(D)(2)

Each receptacle and attachment cap or plug shall be tested for correct attachment of the equipment grounding conductor. The equipment grounding conductor shall be connected to its proper terminal



1910.132(a)

Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

1926.501(b)(1)

"Unprotected sides and edges." Each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8 m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.

Will this cause a potential neck or back injury?

1910.303(g)(1)(vii)(B)
Outdoor electric equipment shall be installed in suitable enclosures and shall be protected from accidental contact by unauthorized personnel, or by vehicular traffic, or by accidental spillage or leakage from piping systems. No architectural appurtenance or other equipment may be located in the working space required by paragraph (g)(1)(i) of this section.

1910.335(a)(1)(v)

Employees shall wear protective equipment for the eyes or face wherever there is danger of injury to the eyes or face from electric arcs or flashes or from flying objects resulting from electrical explosion.

1910.335(a)(2)(ii)

Protective shields, protective barriers, or insulating materials shall be used to protect each employee from shock, burns, or other electrically related injuries while that employee is working near exposed energized parts which might be accidentally contacted or where dangerous electric heating or arcing might occur. When normally enclosed live parts are exposed for maintenance or repair, they shall be guarded to protect unqualified persons from contact with the live parts

1926.501(b)(1)

"Unprotected sides and edges." Each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8 m) or more above a lower level shall be

protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.

APPENDIX H

http://www.cnn.com/2008/US/weather/09/15/hurricane.ike/

[Visited October 20, 2008]

Out of power and 'unsafe,' Galveston starts long cleanup

GALVESTON, Texas (CNN) -- As Galveston's leaders on Monday repeatedly urged its residents to stay away, people who never left tried to make the best of their muggy, tree-strewn, powerless city.

Amy Reid and her neighbors found a good use for all the frozen dinners that had piled up over weeks in their freezers, pooling them as some kind of high-sodium feast they might have to subsist on for a long time.

As of Monday night, there was only one convenience store open in Galveston and one was lucky to find beef jerky and fruit roll-ups on the shelves.

Reid and her new friends cooked on a BBQ and slept on her porch, choosing to suffer the bugs rather than spend a restless night in a sauna-hot house. Her home, hoisted on stilts, was not flooded.

"We've got a whole group of people along the block," she said. "One guy down here has a generator so he charges our phones up and our laptops up." DVDs on

a laptop pass the long wait before Galveston is up and running again.

City manager Steve LeBlanc said people like Reid who remain in Galveston should leave. There's not enough clean drinking water to serve the needs of the 15,000 to 20,000 people who stayed on the island, he said Monday, and there would be a "downward spiral if everybody started coming back."

The city's resources are "stretched to the max," and it could be a month before electricity is restored. **The cleanup will be massive, he said, and the city is "unsafe."**

North of Galveston, Texas Gov. Rick Perry urged residents who evacuated Houston, the nation's fourth-largest city, not to hurry back to their homes.

But Sarah Allen returned to her Houston home Monday, finding it in relatively good shape. Her carpeting was wet from leaks near a sliding glass door, but her apartment had not flooded. She, her boyfriend and six other people rode out Hurricane Ike at a friend's house. "Lots of trees are down in people's apartments," she said. "The covered parking lot has a metal roof and some of it has fallen on cars. Some was rolled up."

About 150,000 of the 220,000 residents who evacuated ahead of the storm were still out of their homes Monday, said Judge Ed Emmett, chief executive of Harris County, which includes Houston. City officials did not lift a boil-water order as expected Monday afternoon, saying water in one location was being retested.

Power has been restored to at least 500,000 customers in the Houston area, according to the Harris County Office of Homeland Security and Emergency Management, but another 1.5 million people in the state still have no electricity.

Marilyn Davidson's Clear Lake neighborhood in Houston was strewn with downed trees. She and her husband relied on a battery-powered radio for information and loaded their refrigerator with ice before the storm.

"Everything in there stayed pretty cool," she said. "We had milk out of it this morning." The wait outside her regular grocery store was a half-hour so the couple went to a CVS pharmacy and stocked up on items they said they would probably never eat like canned mixed nuts and chicken broth.

Davidson did have the one most desired and scarce of goods -- gasoline.

At least 14 Texas refineries closed in the hours before the hurricane hit, taking away more than 20 percent of the nation's oil capacity, The Associated Press reported. Across the nation, gas prices soared for the third straight day, jumping a full dollar at some gas stations.

APPENDIX I

http://www.cbsnews.com/stories/2008/09/22/national/main4467705.shtml

[Visited October 20, 2008]

Ike-Battered Texas Coast Remains Unsafe
Fuel, Other Essentials Still Scarce In Galveston; Curfew To Be Enforced Indefinitely

GALVESTON, Texas, Sept. 22, 2008

(AP) Businesses were beginning to reopen, cell phone service was improving and power was coming back, but **leaders warned that Texas' storm-wrecked Galveston Island remains dangerous more than a week after Hurricane Ike's devastating assault.**

Fuel and other essentials remained scarce and police will indefinitely enforce a 6 p.m. to 6 a.m. curfew once the island reopens Wednesday.

And it could be weeks or more before basic services are restored in all areas. Still, the island is far from deserted - at least 15,000 people ignored mandatory evacuation orders before and after the storm, and many of them were still there Sunday.

Authorities had blamed the storm for 26 deaths in Texas and 61 total from remnants of the storm elsewhere in the U.S. midsection.

Wearing jeans and rubber boots, clutching Bibles and weeping between hymns, residents of the storm-shattered Texas coast comforted each other at makeshift church services.

Outside the Oak Island Baptist Church in Anahuac, about 50 people came together on a basketball court outside the Oak Island Baptist Church, just south of Interstate 10 about a mile (1.6 kilometers) from the tip of Trinity Bay. They sat on folding chairs or simply stood, forced outdoors by the 1-inch (2.5-centimeter) layer of mud left inside the single-story red brick building by floodwaters that tossed pews like matchsticks.

A demolished mobile home was still lodged among trees, many of them snapped by the storm's 110mph (176kph) winds that somehow left the church's trio of 20-foot (6.1-meter) white crosses still standing. Across the street, piles of debris had sprouted, proof of the labor undertaken since the storm blew through last weekend, and of the work yet to come.

"I know it's hard. Looking around, it's tough," the Rev. Eddie Shauberger told the congregants. "But there is a God, and he has a plan for our lives."

Similar services were being held on Galveston Island and throughout the Houston area, where power had been restored to enough residents that schools planned to hold classes Monday for the first time since the storm.

In Galveston, Bobby and Pamela Quiroga sought succor at a Mass set up in the historic Hotel Galvez.

They went to their Roman Catholic church a week ago, the day after storm arrived, but it was closed.

"It's just good to be around people," Bobby Quiroga said. He added, letting his voice trail off, "When you feel a wave shake your house ...."

The newly married 42-year-olds were still trying to gather their senses eight days after watching their homes and businesses flooded by Ike's 12-foot (3.7-meter) surge.

"Fourteen steps, and we watched the water come up all the way up – even to the floor. Surreal," Quiroga said, his wife leaning on his shoulder.

She dabbed her swollen eyes with a hand towel and vowed never to live on the island again.

"When I fall asleep," she said, "I see the water rising."

Observances in the hardest-hit spots weren't overflowing with residents. Most of Galveston won't reopen until Wednesday.

But island leaders emphasized that **Galveston would remain dangerous and parents were warned their children could be exposed to infections from storm debris and other hazards.** Planes continued spraying the island to control mosquitoes. Officials urged those returning to wear masks to protect from mold and to properly dispose of spoiled food to stave off vermin.

Teams of cadaver dogs were still working their way through rubble and debris on Bolivar Peninsula, which

suffered even heavier damage than Galveston. Evacuees from the peninsula will board dump trucks and other heavy vehicles this week to examine their homes, since the main road is impassible in many spots.

Power had been restored to most of the customers in Texas whose electricity was cut by Ike, and in some areas work was ahead of schedule.

Entergy Texas, which serves most of Southeast Texas east of the Trinity River, said Monday it expected to have electric service restored to its hardest-hit areas by Sunday – a week sooner than previous forecasts. Not included in the forecasts are High Island and the Bolivar Peninsula, where the transmission infrastructure will have to be rebuilt, said Joe Domino, president and chief executive officer of the Beaumont-based subsidiary of Entergy Corp.

About one-third of customers in the Houston area remained without electricity Monday morning.